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C O N F I D E N T I A L PRAGUE 000241

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TAGS: [PREL](#) [PGOV](#) [MASS](#) [MARR](#) [EZ](#)
SUBJECT: CZECH REPUBLIC: SEVENTH VISIT OF THE STATUS OF
FORCES NEGOTIATING TEAM

Classified By: CDA M. Thompson-Jones for reasons 1.4 b and d.

1.(C) Summary and Comment: From April 9-11, Ambassador Jackson McDonald, Senior Advisor for Security Negotiations and Agreements (PM/SNA), led an interagency delegation to Prague to continue negotiations on a supplemental Status of Forces Agreement (SOFA). The Czech delegation was in high spirits and very optimistic following the successful conclusion of the Ballistic Missile Defense Agreement (BMDA) and NATO's endorsement of missile defense at Bucharest. At the beginning of the week, the Czech Prime Minister boasted in the press that the SOFA would be finished during this round. Unfortunately, neither the Czech's optimism nor the Prime Minister's predictions translated into greater flexibility on the most difficult SOFA issues. While many issues were successfully resolved, several differences remain.

-- First, scope: The Czechs continue to insist that the SOFA be limited to the radar site;

-- Second, taxing contractors: The Czechs are seeking to tax the profits of contractors building, operating, and maintaining the radar;

-- Third, payment of air navigation and approach fees: The Czechs insist the U.S. pay air navigation and approach fees at private airports.

-- Fourth, the possible indefinite pre-trial confinement of U.S. personnel.

-- Fifth, principle of specialty. The Czechs insist that the U.S. seek permission every time evidence gathered for one prosecution is used in a different criminal or civil matter.

-- Sixth, inclusion of Anti-Deficiency Act Language and consultations on potential compensation for improvements. The Czechs are concerned that radar opponents will utilize these provisions to argue the U.S. will not fulfill its obligations under this agreement and will demand compensation for improvements at the radar facility, when and if we relinquish it.

2.(C) While approximately 90% of the SOFA text is complete, the outstanding issues are the most intractable. Ministry of Defense (MOD) Director for Policy and Strategy Ivan Dvorak, the lead Czech negotiator, and Deputy Defense Minister Bartak emphasized to Ambassador McDonald that the Prime Minister, Defense Minister, and other members of the government believe the Parliament will never ratify a broad SOFA. Taxation is also a concern for the Parliament, as well as personal priority for the influential Minister of Finance. The concern on taxes is to some extent the revenue, but more

important is the principle of not putting into place a special tax regime for the base, separate from that offered by the NATO SOFA and the US-Czech bilateral tax treaty. Before the next round of negotiations, set for April 22-24 in Prague, the USG needs to decide whether a ballistic missile radar site in the Czech Republic is important enough for the U.S. to agree to a limited scope SOFA and permit the taxation of contractors. End Summary and Comment.

Scope

3.(C) Scope remains the most important and difficult issue. During this round, Dvorak and Bartak emphasized several times that the Czech Government at its April 8 State Security Council meeting re-affirmed its commitment to pursue a limited SOFA. The Ministry of Defense and other senior officials in the Czech Government understand the utility of a broader SOFA, but believe that, due to overwhelming public opposition to the radar, the traumatic history of the German and Soviet occupations, and the government's lack of a majority, there is almost a zero chance that the Parliament would ratify a broad SOFA. Dvorak indicated the government may be able to accept language allowing provisions of a limited SOFA to be applied to "other mutually agreed upon activities." To finish the agreement during the next round, Washington should carefully weigh the consequences of limited SOFA versus the benefits of building a BMD radar facility in the Czech Republic.

Tax Status of Contractors

4.(C) Peter Chrenko, the Czech Deputy Minister of Finance(MOF), lead the Czech negotiating team in the session devoted to taxes. Chrenko stated that he and the Czech government are in the process of simplifying their tax systems. Therefore, the Czechs do not want to complicate their tax system by granting contractors tax-free status under a new, special tax regime. He also stated that the Czech Parliament would object to contractors not being subject to all Czech tax obligations. (Note: The Czech Foreign Minister firmly told Ambassador Graber on April 14 that, if the U.S. insists on tax-free status for contractors, there is almost no chance that Parliament will ratify the SOFA.) Ambassador McDonald told the Czechs the U.S. policy is that SOFAs grant contractors tax-free status. He also explained that if the U.S. agreed to these provisions the costs of the facility could dramatically increase. Chrenko responded that he understood this, but the Czechs wanted to be the first to have this provision in their bilateral SOFA.

Air Navigation and Approach Fees

5.(C) The Czechs have consistently maintained that official U.S. flights will not be charged navigation and approach fees at military or government-owned facilities. However, they insist that we should pay these fees at private airports. (Note: Currently, they are only two private airports in the country, neither of which the USG is likely to use). McDonald again articulated the position that the U.S. does not pay these fees for official "state" flights. For the Czechs, this is an issue of private property. They believe that if the USG utilizes the services of a private company or facility, the USG should pay. Given that the U.S. does not pay now and the Czech government has no plans to insist on payment, the USG may be able to resolve this issue by eliminating the article and utilizing only state-owned or military airfields.

Ministry of Justice Concerns: Pre-Trial Confinement/Czech Evidence Rules

6.(C) The Czech Ministry of Justice insists that the U.S. guarantee that all defendants appear in court. To do this, the USG could potentially have to confine service members for an indefinite period before their trial. Trials in the Czech

Republic may take years to complete. The Ministry of Justice and the State Prosecutor also insist the U.S. seek permission from the Czechs to utilize evidence gathered during one criminal investigation in another unrelated matter. The Czechs maintain that, under European human rights law, defendants have the right to challenge the use of this type of evidence in U.S. courts. The U.S. cannot accept the importation of Czech evidentiary rules into a court martial.

Anti-Deficiency Act/Compensation for Improvements

7.(C) The U.S. side introduced the need for the "availability of funds" language during this round. Despite the inclusion of similar language in the Ballistic Missile Defense Agreement (BMDA), Dvorak was visibly upset by this step. The Czechs are concerned that opposition lawmakers will utilize this text to demonstrate that the USG has no intention of living up to its commitments. Dvorak is also concerned that the Congressional requirement that the U.S. consult with the Czechs on possible compensation for improvements at the radar site when and if it departs. He fears that this clause will be similarly spun by radar opponents to point out that the USG will demand large compensation for improvements. Ambassador McDonald told the Czechs that U.S. law requires these provisions.

8.(U) The heads of delegation agreed to reconvene for further negotiations April 22-24.

9.(U) Ambassador McDonald cleared this cable.
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